

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH**

S.B. CIVIL REVISION PETITION NO.494/03

Smt. Bismilla

Versus

Laxminarayan & Ors.

DATE OF ORDER :: 13/12/2006

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Rajveer Singh on behalf of Mr. S.S. Hasan, for
petitioner
Mr. Alok Garg, for respondents

Instant revision petition has been filed by the defendant-petitioner against the order dated 7th December, 2002 whereby application filed by the non-petitioner under O.22 R.4 CPC for taking legal heirs of defendant No.2 Nazzi on record was allowed and legal heir of deceased was taken on record by the order impugned.

Non-petitioner-plaintiff filed a suit for ejectment on the ground of personal necessity, subletting and default in payment of rent. During pendency of the proceedings, one of the defendants Smt. Nazzi expired on 21st April, 2001. Since the plaintiff was not able to know the legal heirs of deceased Smt. Nazzi, hence filed application under O.22 R.10-A CPC on 10th July, 2001 calling upon the another defendant to disclose the name of legal representatives of deceased Smt. Nazzi. But this fact which was in the knowledge of one of the

defendants when not disclosed despite application filed and after this fact came to the notice of the plaintiff, application was filed under O.22 R.4 CPC on 10th July, 2002 for taking legal heirs/representatives of Smt. Nazzi on record. The present defendant-petitioner raised written objection stating inter alia that since the application has not been filed within 90 days, the suit stood abated and no further proceedings could be initiated in the suit which has been finally abated. The learned trial Judge after taking note of material which came on record, particularly, the date on which application was filed by the plaintiff under O.22 R.10-A CPC for other legal heirs of deceased Smt. Nazzi which is undisputedly filed within 90 days of her death and in continuation of it, when came to their knowledge of sole legal representative of deceased Smt. Nazzi, application was filed under O.22 R.4 CPC on 10th July, 2001. This fact cannot be ruled out that when wife of one of the defendants Abdul Hak was the only sole legal heir of Smt. Nazzi it was although required for him to disclose the name of legal heir of deceased which he failed to do so and since no counter was filed with respect to his application which came on record, the learned trial Judge allowed the application filed under O.22 R.4 CPC under the order impugned.

Counsel for petitioner submits that since the application was not filed within 90 days from the date of her death, the suit stood abated and no proceedings thereafter could be initiated. In my

opinion, the submission made is without any substance for the reason that application was filed calling upon other defendant to disclose the name of legal heir of deceased under O.22 R.10-A CPC which was undisputedly within 90 days from the date of her death and in continuation thereof, application was filed under O.22 R.4 CPC for taking legal heirs on record and no counter was filed to such statement made as such the suit cannot be said to be abated.

In my opinion, the learned trial Judge has not committed any error in accepting the application filed by the plaintiff under O.4 R.22 CPC which was within 90 days from the date of knowledge and there was no delay in filing of the application.

Consequently, I find no force in the present revision petition and the same is, accordingly, dismissed. Both the parties are directed to appear before the learned trial Judge on 15th January, 2007 and since the suit was filed by the plaintiff for ejectment in the year 1998, it is expected that the same be disposed of expeditiously.

[AJAY RASTOGI], J.

FRBOHRA, JR.P.A.